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January 13, 1994

VIA FEDERAL EXPRESS

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

Re: In the Matter of Policies and Rules Concerning Toll Fraud
CC Docket No. 93-292

Dear Secretary Searcy:

Our office represents the New Jersey Payphone Association ("NJPA"). On behalf of NJPA, please accept an original and one copy of the within Comments with respect to the above-captioned matter.

Should you require any further information, please contact me.

Very truly yours,


Dennis C. Linken

DCL
enc.

cc: Common Carrier Bureau (2 copies)
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Mark Palmieri, President
Board of Trustees
Barbara B. Silkworth, Executive Director

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FCC 93-496

**In the Matter of
Policies and Rules
Concerning Toll Fraud**

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)

CC Docket No. 93-292

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**COMMENTS
of
NEW JERSEY PAYPHONE ASSOCIATION**

To: Honorable Federal Communication Commission

The New Jersey Payphone Association ("NJPA") herewith submits the within Comments to the Notice of Proposed Rulemaking ("Notice") issued by the Federal Communications Commission (the "Commission") in the above-captioned matter. Our Comments are directed specifically to Section III C of the Notice, dealing with Payphone Fraud.

NJPA is a trade organization consisting of small- to medium-sized competitive payphone operators and related industry suppliers of equipment and services. Its more than 40 members provide service to over 9,000 payphones in the State of New Jersey.

NJPA has previously provided Comments to the Commission in connection with the Petition filed by the Florida Public Service Commission ("Florida PSC"), File No. 93 - Toll Fraud - 02. The Florida PSC sought a rulemaking from the Commission to the effect that payphone providers would not be liable for fraudulent phone calls placed through their phones, provided that certain criteria were met, including a requirement that originating line screening and billed number screening were subscribed to by the payphone operator. NJPA supported the Florida PSC Petition, arguing the need for a national policy governing the responsibility for fraudulent phone calls completed over pay telephones and apportioning the responsibility therefor among the parties involved -- IXC's, LEC's and payphone operators. NJPA essentially argued for a system allocating responsibility on the basis of fault.

NJPA reiterates its earlier position. NJPA believes that it is essential to adopt a uniform, nationwide policy which establishes liability based upon the party which has the greatest practical ability to prevent fraudulent phone calls. If a payphone operator has availed itself of the call screening services provided by the LEC, it should not be liable for fraudulent phone calls. Essentially, NJPA believes that if a payphone operator has done all that it reasonably can to prevent fraud, it should not be held liable, especially since the other parties involved, the LEC's and the IXC's, are in a far better position to exercise control over the situation. In addition, in the absence of a policy that places liability upon an IXC for failure to take responsibility over a matter so clearly within its control, the IXC will have little, if any, incentive to act diligently.

Further, as to LEC's, it would seem clear that the failure of screening processes to which payphone operators subscribe, should subject LEC's to liability which occurs as a result.

It should be noted, however, that liability of the LEC's or the IXC's, based upon the failure of equipment or services, should not be confined to just the screening services subscribed to by payphone operators. There have been instances in which payphone operators in New Jersey have experienced fraud as a result of the failure or breakdown of other telephone system equipment of a carrier. The decision as to whether a particular LEC or IXC excuses a payphone operator from liability from fraud as a result of a failure of telephone system equipment, should not be left to the discretion of the LEC or IXC. Rather, the rule should be clearly stated: if a payphone operator experiences fraud stemming from the failure of LEC or IXC equipment or services, the payphone operator should not be held liable.

In addition, NJPA believes that the Commission's decision in United Artists¹ should be expanded so as to apply regardless of whether a payphone operator is a "customer" of the IXC. NJPA's position is simple: if a payphone operator has taken all reasonable steps to prevent fraud on its phones, it should not be held liable. It should not matter whether the payphone operator is a "customer" of a LEC, for the approach should be the same. To suggest otherwise is to contend that a payphone operator is somehow willing to accept liability for fraud, even though it has taken all reasonable actions to prevent it, merely because it does business with a particular IXC. NJPA suggests that such logic runs counter to good business practice and as a practical matter makes no sense.

NJPA believes that the Florida PSC approach is efficient and works well. It has the advantages of being clear, not ambiguous and easy to administer. Along those lines, NJPA would urge that the "reasonable steps" of which the Commission speaks (Notice, ¶ 31) be defined to refer to the subscription by a payphone operator of originating line and billed number screening services from a LEC (assuming they are available [at a reasonable price] from the LEC). NJPA's understanding from its members is that such screening services are widely used by New Jersey payphone operators.

NJPA would urge that the Commission expand the scope of its ruling in this matter to include direct-dialed calls as well as operator handled calls. The rationale would be similar: where a payphone operator has taken reasonable steps to prevent fraud on its phones (such as having availed itself of international direct-dial call blocking services from a LEC [again assuming they are available]), it should not be held liable for international direct-dialed fraud which occurs on the network.

The Commission also asks the parties to comment as to what obligations should be imposed upon carriers in terms of fraud prevention (Notice, ¶41). NJPA feels strongly that all carriers, be they LEC's or IXC's, should be required to undertake on-going and routine monitoring to prevent fraud on their networks. One cannot dispute that fraud is contrary to the public interest. If this be so, it would seem that a carrier which refuses to actively and

¹ File Nos. E-9090-181, E-90-182.

determinedly move to discover and attempt to prevent fraud is not acting in the public interest. Failing the conduct of a strong fraud detection and prevention program, a carrier should be precluded from holding, under any circumstances, a payphone operator responsible for fraud.

Lastly, the Commission suggests the possible formation of a Federal Advisory Committee to examine issues related to toll fraud. NJPA supports such a Committee. It should be noted, however, that the formation or existence of such a Committee should not be deemed a substitute for the other action urged herein by NJPA. Rather, such a Committee, while important, must be recognized as a long-term aid to a serious problem -- a problem that requires immediate resolution.

Dated: January 13, 1994